

STATE OF NEW YORK  
SUPREME COURT      COUNTY OF SENECA  
In The Matter Of The Application Of

## SENECA MEADOWS, INC.

Petitioner-Plaintiff,

- VS -

TOWN OF SENECA FALLS and  
TOWN OF SENECA FALLS TOWN BOARD

### Respondents-Defendants,

For a judgment pursuant to Article 78 of the Civil Practice Laws and Rules and CPLR 3001.

**VERIFIED PETITION/  
COMPLAINT**

Index No. 50905

### Justice Assigned:

201 FEB - 3 D 2:57

Oral Argument  
Requested

Petitioner-Plaintiff Seneca Meadows, Inc. (“SMI”), by its attorneys, Nixon Peabody LLP, alleges as follows upon information and belief for its Article 78 Petition/Complaint against Respondents-Defendants the Town of Seneca Falls (the “Town”) and the Town of Seneca Falls Town Board (the “Town Board”) herein:

## INTRODUCTION

1. This is a combined CPLR Article 78 proceeding and declaratory judgment action challenging the Town Board's adoption of Local Law #3 of 2016 entitled "Waste Disposal Law" (the "Local Law") on December 6, 2016.

2. SMI brings this combined CPLR Article 78 proceeding and declaratory judgment action because the Town Board failed to comply with the State Environmental Quality Review Act (“SEQR”), allowed a biased member of the Town Board to participate in the vote adopting the Local Law, and violated SMI’s substantive due process rights in adopting the Local Law.

Received February 3, 2017  
at 4:05 o'clock P.M.  
Elizabeth J. Green  
TOMI USA

Local Law.

### PARTIES

3. SMI is a corporation organized under the laws of the State of New York with offices at 1786 Salzman Road, Waterloo, NY 13165.

4. The Town is a municipal corporation of the State of New York existing by reason of and pursuant to the laws of the State of New York. The Town Board is a town board organized under the laws of the State of New York with offices at 81 W. Bayard Street, Seneca Falls, NY 13148.

### JURISDICTION AND VENUE

5. This Court has jurisdiction over this combined CPLR Article 78 proceeding and declaratory judgment action pursuant to CPLR 506(b), 7804(b), and 3001.

6. Venue in the County of Seneca is proper pursuant to CPLR 504 and 506(b) because it is the county where the Town and the Town Board are situated, and where the material events of this proceeding took place.

### PETITIONER

7. SMI operates a solid waste management facility at property it owns located at 1786 Salzman Road, Waterloo, NY 13165 (the "Facility") within the Town.

8. SMI opposes the Local Law since it jeopardizes the ongoing operation of the Facility.

9. The Local Law includes factual "Findings" that relate directly to SMI's operations and their alleged negative impacts on the Town, including but not limited to, air and water pollution, odors, traffic, noise and dust. These Findings are not factually or scientifically supported or accurate. In addition, the language of the Local Law lacks the necessary clarity to

provide assurance that provisions contained therein will not negatively impact SMI prior to the year 2025.

### THE LOCAL LAW

10. The concept of a local law regulating solid waste disposal first surfaced at the Town Board's regular April 5, 2016 meeting when attorney Douglas Zamelis, representing Waterloo Container (a neighbor of SMI and an active supporter of opponents of SMI), provided the Town Board with a draft proposed local law that would ban solid waste management facilities in the Town and restrict existing solid waste management facilities (of which SMI's Facility is the only such facility) despite the existence of a provision of the Town Code that already regulates the operations of solid waste management facilities (Chapter 185. Landfills).

11. The Local Law was first proposed by Town Board member Annette Lutz on May 3, 2016 at a regular Town Board meeting (the "First Draft"). Ms. Lutz is a co-owner and employee of Waterloo Container. A copy of the First Draft (then styled "Local Law #7") is attached as Exhibit 1.

12. The Town proposed a public hearing on the First Draft only 35 days after the First Draft was initially made available to the public and SMI.

13. SMI requested an adjournment of the June 7, 2016 public hearing on the First Draft to allow sufficient time for review of the language of the First Draft and for the preparation and submission of comments. A copy of SMI's May 20, 2016 request is attached as Exhibit 2.

14. Having previously postponed the scheduled public hearing, the Town Board at its regular August 2, 2016 meeting voted to reschedule the public hearing to September 28, 2016.

15. By letter dated August 4, 2016, SMI requested that the public hearing be rescheduled until mid-October to give SMI the requisite time to prepare.

16. At its September 14, 2016 Special Meeting, the Town converted the September 28, 2016 public hearing on the First Draft into a public forum.

17. Representatives of SMI appeared at the September 28, 2016 public forum and provided testimony demonstrating that the factual and technical Findings contained in the First Draft were not factually or scientifically supported or accurate.

18. In addition to SMI, other interested parties and residents of the Town communicated their opposition to the First Draft.

**A. Public Hearing**

19. It was not until a Town Board meeting on November 10, 2016 that the Town Board again discussed the proposed Local Law.

20. At that meeting, Town Board member Lutz made a motion to schedule a public hearing on the Local Law for November 30, 2016.

21. The version of the Local Law provided to the public after the November 10, 2016 Town Board meeting had been significantly amended from the First Draft considered by the public at the September 28, 2016 public forum. A copy of the Local Law is attached as Exhibit 3.

22. Because of the significant changes made to the First Draft, SMI requested an adjournment of the November 30, 2016 public hearing date (which allowed only twenty-days, including the Thanksgiving holiday) for the public and SMI to review the changes to the Local Law from the First Draft and prepare comments. A copy of SMI's request is attached as Exhibit 4.

23. The Town ignored the request for an adjournment and held the public hearing on November 30, 2016.

24. Representatives of SMI once again appeared and provided testimony challenging the factual and technical Findings of the Local Law. In addition, SMI submitted robust written comments demonstrating that the Findings of the Local Law were not factually or scientifically supported or accurate. Documents supporting SMI's testimony were delivered to the Town Clerk prior to the public hearing. A copy of SMI's comments on the Local Law and supporting documents is attached as Exhibit 5.

25. In addition to SMI, other interested parties and residents of the Town communicated their opposition to the Local Law.

**B. The SEQR "Review"**

26. After all public comment had been received, and apparently without having notified any other member of the Town Board of her intent, Town Board member Lutz produced an Environmental Assessment Form and Negative Declaration.

27. Ms. Lutz stated that the Environmental Assessment Form and Negative Declaration had been prepared by Waterloo Container's attorney Mr. Zamelis, not the Town attorney. As noted previously, Ms. Lutz is a co-owner and employee of Waterloo Container.

28. It was apparent that the other Town Board members had not only never seen these documents before, but that they were completely unaware of their substantive contents or legal import.

29. After blindsiding not only her fellow Town Board members, but also those in attendance at the public hearing, Board member Lutz proceeded to read the Environmental Assessment Form and instruct the Town Board as to the next steps for undertaking the SEQR review of the Local Law, all the while receiving direction from Waterloo Container's attorney Mr. Zamelis who had moved from the back of the room to a prominent front seat.

30. After reading the Environmental Assessment Form to the remainder of the Town Board, Ms. Lutz proceeded to read a resolution adopting a Negative Declaration. It was obvious that the remainder of the Town Board had never seen or considered the resolution before it was handed to them moments before.

31. Ms. Lutz then moved for a vote to adopt Negative Declaration, despite the fact that not a single member of the Town Board, other than herself, had previously seen or considered the Negative Declaration.

32. The Town Board then voted to adopt the Negative Declaration after having only mere minutes to consider the substantive issues contained therein.

33. In conducting its SEQR review, the Town Board was required to take a "hard look" at the relevant areas of environmental concern prior to adopting the Local Law.

34. However, it is difficult to conceive of how the Town Board could have complied with this key element of SEQR when their alleged "hard look" occurred for no more than ten minutes.

### **C. Board Member Lutz's Bias**

35. On March 21, 2016, Board member Lutz was appointed to the Town Board.

36. Both before and after Board member Lutz's appointment, she has displayed actual bias towards SMI by engaging in actions to oppose SMI and its operations.

37. As noted previously, Board member Lutz is a co-owner and employee of Waterloo Container, which is a neighbor of SMI and which has been an active supporter of opponents of SMI.

38. Board member Lutz has personally attended and helped organize various events for the sole purpose of opposing the operations of SMI.

39. Board member Lutz's personal self-interest and opposition to SMI also caused her to retain her company's counsel to advise her on how to proceed in assuring passage of the Local Law, which has the potential to negatively impact SMI's operations.

40. It was Ms. Lutz who made a motion to propose the Local Law at a Town Board meeting on November 10, 2016, only two days after Ms. Lutz had lost her election to continue as a Town Board member following her initial appointment.

41. It was Ms. Lutz, upon information and belief, who had her company's counsel draft the Environmental Assessment Form, Negative Declaration, and resolution.

42. And it was Ms. Lutz who precipitated a vote to adopt the Environmental Assessment Form and Negative Declaration at the public hearing for the Local Law without allowing her fellow board members to take the requisite "hard look" at the relevant environmental concerns.

43. SMI provided a letter to the Town outlining its concerns regarding Board member Lutz's bias on December 5, 2016 and requesting that she recuse herself. A copy of SMI's correspondence is attached as Exhibit 6. Despite the uncontroverted facts surrounding Ms. Lutz's bias against SMI, the Town Board ignored SMI's request.

#### **D. Adoption of the Local Law**

44. The Town Board held its next regularly scheduled meeting on December 6, 2016.

45. At the December 6, 2016 Town Board meeting, the Town Board, including Board member Lutz, voted to adopt the Local Law.

### **PROCEDURAL ISSUES**

46. SMI has no further administrative remedy.

47. SMI has made no previous application for the relief sought in this Petition-Complaint.

48. SMI has no adequate remedy at law.

**FIRST CAUSE OF ACTION**  
**Failure to Comply with the Requirements of SEQR**

49. SMI repeats and realleges the allegations set forth in paragraphs 1 through 48 as if fully set forth herein.

50. Prior to adopting the Local Law, SEQR required the Town Board to identify the relevant areas of environmental concern, take a hard look at those areas, and provide a reasoned elaboration for the basis of its determination.

51. The Town Board failed to take the required hard look at the relevant areas of environmental concern pertaining to the Local Law when not a single member of the Town Board, other than Ms. Lutz, had seen or considered the Environmental Assessment Form or Negative Declaration until it was handed to them on the evening of November 30, 2016 and, consequently, members of the Town Board had mere minutes to consider those documents prior to voting to adopt them.

52. By failing to take the required hard look pursuant to SEQR, the Town Board acted in violation of lawful procedure in adopting the Local Law.

53. Further, upon information and belief, and/or as may be further determined upon filing of the record, the Negative Declaration was further insufficient and conclusory, and failed to adequately consider the proposed action, thoroughly analyze relevant areas of environmental concern, and make an adequate "reasoned elaboration," as required by 6 N.Y.C.R.R. § 617.7(b),

54. Upon information and belief, there may be other deficiencies in the SEQR process that will be revealed upon the Town Board's filing of the record of proceedings, such as lack of

proper notice, failure to properly designate the lead agency and/or failure to consider one or more significant environmental impacts.

55. Accordingly, the Negative Declaration and review of the Local Law under SEQR were arbitrary and capricious and were approved in violation of SEQR and the SEQR regulations, and therefore the Local Law is illegal because it was not subjected to an adequate environmental review.

56. By reason of the foregoing, SMI is entitled to an Order and Judgment vacating, annulling, and declaring the Local Law null and void as a matter of law.

**SECOND CAUSE OF ACTION**  
**Bias and/or Conflict of Interest of Ms. Annette Lutz**

57. SMI repeats and realleges the allegations set forth in paragraphs 1 through 56 as if fully set forth herein.

58. Prior to the Town Board's votes to adopt the Negative Declaration and the Local Law, Board member Lutz manifested actual bias against SMI and its operations in the Town.

59. Board member Lutz's actual bias disqualified her from voting on the Negative Declaration and the Local Law, the adoption of which would have a direct, negative impact on SMI's operations.

60. SMI provided the Town Board with notice of Ms. Lutz's bias and requested that she recuse herself from voting, a request that the Town Board ignored.

61. By reason of the foregoing, SMI is entitled to an Order and Judgment vacating, annulling, and declaring the Local Law null and void as a matter of law.

**THIRD CAUSE OF ACTION**  
**Denial of Substantive Due Process Rights**

62. SMI repeats and realleges the allegations set forth in paragraphs 1 through 61 as if fully set forth herein.

63. SMI has a vested property interest to continue its operations in the Town.

64. The Local Law deprives SMI of this property interest by allowing the Town to prevent SMI's operations without legal justification in that the "Findings" and "Purpose" for which it was allegedly passed are not factually or scientifically supported or accurate.

65. The Local Law contains no explanation of the factual bases for the purported "Findings," such as actual studies or evaluations.

66. The record of proceedings will reveal, and SMI's comments on the Local Law highlight, the utter lack of any factual evidence that supports the Local Law's Findings.

67. SMI's comments on the Local Law lay bare the reality that substantial evidence exists that contradicts the Findings, rendering the Local Law arbitrary, capricious and illegal.

68. The Local Law is also impermissibly vague in that it contains provisions related to the potential impact of even minor violations (or alleged violations) of other laws applicable to SMI on SMI's continued ability to operate.

69. The Town utterly failed to recognize SMI's vested property rights in the continued operation of the Facility and to adequately assess the impact of the Local Law on those vested rights.

70. The Town also failed to fully assess the justification for the Findings contained in the Local Law to assess their truth and accuracy and, accordingly, the value of the Local Law in support of a legitimate public purpose.

71. The existing ability of the Town to impose conditions on a solid waste management facility's operation to protect "public health, safety, welfare or the environment" under Town Code Chapter 185 provides the protection needed to address the issues purportedly addressed by the Local Law, particularly those included in the baseless "Findings" and "Purpose" provisions.

72. Accordingly, the adoption of the Local Law constituted a deprivation of SMI's substantive due process rights in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and was arbitrary, capricious and illegal.

73. By reason of the foregoing, SMI is entitled to an Order and Judgment vacating, annulling, and declaring the Local Law null and void as a matter of law.

**FOURTH CAUSE OF ACTION**  
**Arbitrary, Capricious and/or Illegal Action**

74. SMI repeats and realleges the allegations set forth in paragraphs 1 through 73 as if fully set forth herein.

75. Upon information and belief, and/or as may be further determined upon the Town Board's filing of the record of proceedings, the Local Law may otherwise be in violation of other laws, regulations and procedures, including but not limited to additional violations of SMI's constitutional rights, and/or arbitrary and capricious.

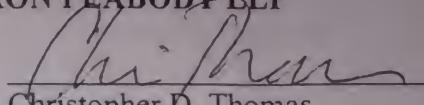
**WHEREFORE**, SMI respectfully requests that the Court grant an Order and Judgment:

- a. Vacating, annulling, and declaring the Local Law null and void as a matter of law;
- b. Awarding SMI its attorneys' fees, costs, and disbursements;

c. Granting such other and further relief as the Court deems just and proper.

Dated: February 3, 2017  
Rochester, New York

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